

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

DOMINIC D. MILLER

§

VS.

§

CIVIL ACTION NO. 2:20cv390

DAVID McKNIGHT, ET AL.

§

ORDER OF DISMISSAL

Plaintiff Dominic D. Miller, a prisoner confined at the Hutchins Unit proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge Roy S. Payne for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On January 29, 2024, Judge Payne issued a Report, (Dkt. No. 23), recommending that Plaintiff's proceeding be dismissed, with prejudice, as both frivolous and for the failure to state a claim upon which relief may be granted. A copy of this Report was sent to Plaintiff at his last-known address, with an acknowledgment card. The docket reflects that Plaintiff received a copy of the Report on February 6, 2024, (Dkt. No. 24). To date, however, Plaintiff has not filed objections.

Because objections to Judge Payne's Report have not been filed, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243

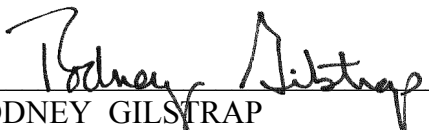
(1989) (holding that where no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law.”). Plaintiff is hereby warned that the decision dismissing his civil rights claims as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). He is cautioned that once he accumulates three strikes, he may not proceed *in forma pauperis* (IFP) either in any civil action or in any appeal of a civil action which is filed while he is incarcerated or detained in any facility—unless he is under imminent danger of serious physical injury. Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge, (Dkt. No. 23), is **ADOPTED** as the opinion of the Court. Further, it is

ORDERED that the above-styled civil action is **DISMISSED**, with prejudice, as both frivolous and for the failure to state a claim upon which relief may be granted. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 8th day of March, 2024.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE